IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5769 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STYAWADDI ILLYAS MUKESH ILLYAS

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 5769 of 2004

MR SL VAISHYA for Petitioner No. 1-2

RULE SERVED for Respondent No. 1-2

MS AC RAVAL, AGP for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 09/08/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu has challenged his detention order dated 12-02-2004. By

the said order, the petitioner is detained as a "bootlegger" under PASA. Along with the order of detention, petitioner is also served with the grounds of detention. In the grounds of detention, there is a reference about seven criminal cases pending against the petitioner. All these cases are registered under Bombay Prohibition Act. The detaining authority has also recorded statements of some witnesses. After being satisfied subjectively, the detaining authority has passed order of detention against the petitioner, which is impugned in this petition.

2) Mr.Vaishya, learned advocate for the petitioner submitted that though other points are available, he is confining his argument only qua delay in deciding representation of the petitioner. He further submitted that the sister of the petitioner has made a representation on 17-2-2004. It is submitted by him that the said representation of the petitioner was decided on 25-2-2004, therefore, there is a delay in deciding representation of the petitioner and on this ground this petition is required to be allowed.

3) To substantiate his say, the learned advocate for the petitioner has relied upon a decision of this Court in NARAYAN TUKARAM BADDI v. State of Gujarat & Ors. reported in 1996 (1) GLR 31, wherein on the ground of unexplained delay in considering the representation, this Court has set aside the detention order. In the aforesaid case, the Court was concerned with a case wherein the petitioner was detained under the provisions of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act. The detenu therein made a representation, which was disposed of after a considerable delay and delay was not satisfactorily explained. This Court held that the authorities may act with utmost promptness in disposing of the representation. While quashing the detention order passed against the detenu, this Court held that right is guaranteed to every detenu of making representation at the earliest opportunity against the order of detention and as a necessary corollary by using words "as soon as may be" in Article 22 (5) of the Constitution of India, the anxiety on the part of the framers of the Constitution of India to inform the detenu of the grounds of detention is reflected. This Court further observed that once the earliest opportunity is provided to make a representation against the order of detention, correspondingly, there is a constitutional obligation for the speedy and expeditious consideration of such representation by the authority. This Court

further held that utmost promptitude, expedition and diligence is expected from the authority to consider such representation. Even though no time limit is prescribed for the purpose of deciding representation, any indifference, avoidable delay or remissness on the part of the authority in considering the representation would vitiate the continued detention of the detenu.

4) On the other hand, Ms.Raval, learned AGP, after going through file, has submitted that representation of the petitioner was received by the State Government on 21-2-2004 and the same was decided on 25-2-2004. Therefore, the submission made by the learned advocate for the petitioner is factually correct. Apart from that, even no reply is filed by the respondent-authority and the delay in deciding representation of the petitioner has remained unexplained. In that view of the matter, since the representation of the petitioner is not dealt with forthwith, this petition is required to be allowed. As further detention of the petitioner would be violative of Article 22 (5) of the Constitution of India, the same is held to be illegal.

6) At this stage, learned advocate for the petitioner after taking instruction from his client, has made a voluntary statement that, the petitioner will not enter area of Shahibaug Police Station as well as area of Meghaninagar Police Station, upto 30th November, 2004. This statement is recorded and the police authority is directed to monitor whether the petitioner is entering aforesaid area or not.

5) In view of above discussion, this petition is allowed. The order of detention dated 12-02-2004 is quashed and set aside. The detenu, Satyawadi alias Mukesh S/o. Ravaji alias Babubhai Bhil is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B.Majmudar,J.)
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